

Town of Pelham, NH
Pelham Conservation Commission
6 Village Green
Pelham, NH 03076-3723

MEETING OF 04/14/21

Members Present: In-Person

Karen Mackay, Brandie Shydo
Dennis Hogan (alt), Al Steward (alt)
Louise Delehanty

Members Present: On Zoom

Ken Stanvick

APPROVED 05/12/21

Members Absent:

Lisa Loosigian, Kara Kubit (alt),
Mike Gendreau, Paul Gagnon

Karen Mackay brought the meeting to order at 7:02 p. m. This meeting is being conducted both in-person and on Zoom. Five members attended the meeting in-person and 1 member attended the meeting on Zoom. Mr. Greg Holt and Mr. Michael Accomando, the applicants, attended in-person. Mr. John Lozowski, the code compliance officer of the town, also attended in-person. Mr. Andrew Prolman, Mr. Accomando's attorney, attended the meeting on zoom. Ms. Mackay began by reading a lengthy introduction into the record which described how to conduct meetings according to the Covid-19 pandemic emergency. The emergency procedures have been authorized by Governor Sununu. See attachment # 1 for a copy of the meeting rules for right to know compliance during the pandemic. All votes during this meeting will be roll call votes. The members on Zoom are alone in the room in which they are participating in this meeting.

NEW BUSINESS:

Map 24 Lot 12-44-4	96 Mulberry Lane – Discussion of an after the fact variance for an in-ground swimming pool within the wetland conservation district (WCD) – Presentation by Greg Holt, Lead Designer Sales of Aquatime Pools, Mr. Mike Accomando, the owner, and Mr. Andrew Prolman, of Prunier & Prolman, P.A. – John Lozowski, code compliance officer for the town of Pelham, will explain the procedures the applicant followed to obtain a pool permit and the impact to the WCD from the pool installation.
--------------------	---

The last week of November 2020, Mr. Holt received a stop work order from the town of Pelham. At that time, the pool company had completed the installation of the pool shell and had backfilled the pool. The excavation for the pool was largely ledge so a substantial amount of fill was needed under and around the pool. Mr. Holt and Mr. Accomando, the home owner, met with Mr. Lozowski. Mr. Lozowski issued a stop work order and told the applicant to install siltation controls. Mr. Holt had silt fence and hay bales installed. He then reached out to Neil Bilodeau from NH Department of Environmental Services (NHDES). Mr. Bilodeau sent a letter on

December 9 about a suspected wetlands violation. NHDES investigated the case and found there was no violation in the jurisdictional wetland. Mr. Bilodeau said siltation controls should remain on the slope above the wetland until the slope is stabilized and vegetated. He noted, in his letter, that the toe of slope was consistent with the limits of clearing from aerial photos taken in 2005. The applicant acknowledged the pool is 100 percent within the WCD, but the WCD was previously a grass yard. The placement of the pool in the WCD was human error and there was no nefarious intent. The applicant is looking for recommendations and direction to remediate the current situation.

Mr. Accomando recalled, in 2007, remediation was done for the destruction of trees in the WCD. New trees were planted to replace the trees that were destroyed. The new trees were removed in order to get to the back yard with the pool construction equipment. The applicant intended to replace the trees when the installation was finished. NHDES did not have a problem with the removal of the trees, but did note, in their letter, that the area of the removed trees and the pool is subject to the town WCD ordinance.

Mr. Lozowski explained his involvement in the case. On November 19, 2020 he received a complaint that Mr. Accomando was building a swimming pool within the buffer and had taken down several trees. Mr. Lozowski pulled the building file prior to visiting the site. He found there had been a violation in 2007 for cutting trees within the WCD. Mr. Accomando remedied the 2007 violation by planting new trees in the WCD buffer. Mr. Lozowski found that Mr. Accomando had been issued a building permit for the swimming pool in August 2020. The permit specified there could be no work and no materials for the pool could be placed within the wetland or WCD. Mr. Lozowski then investigated the conditions on the site and found the WCD was violated and the wetland may have been violated.

Attached to the permit was a drawing of the parcel with the WCD colored in red. The house was outlined as was the location of the future pool. There was plenty of space outside the WCD so no variance was needed from the Zoning Board of Adjustment (ZBA). Mr. Lozowski arrived at the site and immediately knew the pool was in the buffer. The buffer was located 24 feet off the right rear corner of the house, 32 feet off the center of the house and 20 feet off the left corner of the house. Mr. Lozowski met with Mr. Accomando who was surprised the pool was in the buffer zone.

Mr. Lozowski reviewed the 2007 action with the Commission. He said his predecessor, Mr. Tom Wakefield, was on the property in 2007 because of the cutting of trees in the WCD. Mr. Accomando hired Beaver Brook Environmental Consultants (BBEC) to create a plan to replant 14 trees in the buffer. Mr. Wakefield did not document the planting of the trees, but did close the case several years later. Mr. Lozowski believes the applicant followed the plan and planted the trees in 2007. He feels the applicant has been truthful and has cooperated in this inquiry. The problem is the fact that the 2007 trees are no longer there.

Mr. Accomando and Mr. Holt have offered to Mr. Lozowski that they will get a wetland scientist to design a plan to recreate conditions which will mitigate their error of the placement of the pool. Ms. Jenn Beauregard, the town zoning administrator, suggested the applicants come to Conservation prior to going to Zoning in order to get our input.

Ms. Mackay said she believed the applicant complied with the tree planting in 2007 after the violation. Meisner/Brim marked the WCD line on trees in Mr. Accomando's back yard in 2006. Ms. Shydo asked if the WCD signs were put on the newly planted trees. Mr. Accomando said they were not added to the newly planted trees. He said the signs were on the large trees toward the side of the yard. Mr. Holt said there are trees with WCD signs on them in the yard. He stated the pool installers stayed away from the signed trees.

Mr. Steward asked if the WCD signs are still on the trees at the edge of the WCD. He asked if the wetland flags and buffer markers labeled on the BBEC drawing from 2007 are still visible. Mr. Accomando said he had no idea about the buffer in 2007 when he hired someone to cut the trees in his back yard. He was not aware of any buffer markers on the trees that were cut in 2007. Mr. Wakefield investigated the violation. Mr. Accomando hired BBEC to draw a plan for restoration. He then planted 14 trees as requested. The case was closed in 2013. Ms. Mackay said the WCD signs went up in September 2006 as shown on a town document. Mr. Accomando moved to the property with his family in October 2006.

Mr. Hogan asked how many of the 2007 trees were removed for the construction of the pool. Eleven trees were removed and 3 remain. If the pool had been placed where it was described on the plan/permit then it would have been 15-20 feet off the house. Mr. Holt speculated this was how the problem may have occurred. The plan described measurements off the foundation of the house. The workers measured from the edge of the deck rather than the foundation.

Mr. Prolman said this issue was human error. They are acknowledging the pool is within the WCD. The land owner worked with Mr. Wakefield in 2007 to resolve the tree cutting incident and wants to make sure the Commission recognizes that fact. He wants the Commission to realize Mr. Wakefield closed the case on the tree cutting incident. He and his client are now looking to make the best of a difficult situation. They are looking for our suggestions and guidance as to plantings and landscaping that can be done to make the situation better. He stated that none of us want to be in this situation, the measuring was done wrong and we now would like to make the best of this situation.

Ms. Shydo accepted the applicant fulfilled his duties in the case from 2007, agreed the case was closed and said that was excellent. She then stated that because of the action in 2007 the applicant was aware the replanted trees were in the WCD. The WCD is a no cut/no disturb area. Mr. Accomando said he thought the trees could be taken down to get equipment into the back yard and then they could be replaced after construction of the pool. Ms. Shydo said the trees taken down was one issue and the pool within the WCD was a second issue. She asked how close the pool was to the wetland. Mr. Bilideau had stated in his letter that the pool was 11 feet from top of slope. Mr. Lozowski said he thought the pool was about 25 feet from the wetland, as he observed when he inspected the property. Mr. Lozowski did not take any measurement. The edge of the pool, on the house side, is roughly along the WCD line.

Trees were cut on the side of the house with the deck. Mr. Accomando was going to replant to the plan from 2007. Mr. Holt came into the back yard on that side of the house because his

professional opinion was that was the best/safest way to access the back yard. Commission members said they would accept his opinion.

Mr. Stanvick felt there were a lot of errors made on this property. First, the mistakes made in 2007 that led to a violation. This was fixed in 2008 so the applicant knew where the WCD was located. In 2020, a permit was granted for the pool that specified the pool was to be located outside the WCD. Now we have a pool and cut trees within the WCD. Mr. Lozowski added that the building permit specified there was to be no equipment or building within the WCD. Mr. Holt stated that there was human error in the placement of the pool. The installers used a plan, from Planning, that did not have a deck drawn on the plan. They took measurements from the deck rather than the foundation. Mr. Lozowski confirmed the deck was not drawn on the plan that was provided by the town.

Ms. Delehanty asked how trees that were marked could have been taken down. Mr. Holt said he did not believe any marked trees were taken down. There are trees in the back yard that have WCD signs on them. She asked about the condition of the pool. Mr. Holt said the pool was basically finished and only needs a plaster finish and to be filled with water. Ms. Delehanty questioned whether water could back up under the pool because of the water table being so close to the wetland. Mr. Holt said there was no water under the pool when they dug the hole. The area was solid ledge. No blasting was necessary, but a lot of rock was removed and hauled away. A lot of fill was needed under the pool to fill voids in the rock. The mulch seen in the pictures of the yard is all natural and was formed from chipping trees.

Mr. Hogan asked about the deck around the pool. Mr. Holt said it would be 4 feet on the wetland side of the pool. Mr. Hogan was concerned that we are now taking a 25 foot distance from the pool to the wetland and making it 21 feet. He described the WCD as not simply an arbitrary thing used to harass home owners. The WCD is an opportunity to filter contaminants in storm water before they get to a wetland. The WCD is designed to have vegetation and trees to filter water before it gets to the wetland to prevent pollution from getting into the wetland. He said there is no way for the water to penetrate into the ground in the location of the pool. Crushed stone around the pool is not vegetation. He is concerned that now there is 21 feet between the pool deck and the wetland. Mr. Hogan felt the applicant should come up with a plan that could offset the impervious surface the applicant created that will maximize water infiltration. Mr. Holt said there was very little infiltration in that area because of the ledge. Mr. Hogan said that is why we need the trees.

Mr. Hogan said to Mr. Accomando that not everyone understands the WCD. You did not in 2007, but you do now. We have a situation that is blindingly clear that there should be no entrance into the WCD as stated on the permit. Now we have a pool in the WCD only 21 feet from a wetland and it is problematic.

In the DES report, DES determined the slope is consistent with aerial photos from 2005. Mr. Holt wants to add grass back to the yard and follow the plan for planting from 2007.

Ms. Mackay said she was not looking at this project in a favorable way. The applicant knew the construction was being done in the WCD because it was being done in an area that action had

been taken in 2007 which resulted in the planting of trees. The WCD is a protective area on this property that is adjacent to a substantial wetland. NHDES said the wetland was not disturbed and we want to give you credit for that because it is important; however, the WCD was completely impacted for the installation of the pool. The WCD has a specific purpose which is to protect the wetlands in the town of Pelham. The WCD is a no cut/no disturb zone. Any type of vegetation helps filter water, but the thicker and denser the better. Conservation wants to see thick, deep grass and scrub-shrub for the best filtration. Some grass is good, but groomed, mowed grass is not desirable. Rain water enters the WCD, filters through vegetation and comes out clean. The vegetation slows the water which prevents erosion and prevents silt from washing into the wetland. The slope on the back of the pool is very steep. If we get a rain storm, water will run down the slope into the wetland along with dirt. Ms. Mackay acknowledged the applicant has hay bales and silt fence, but she has seen those things overrun by sheets of mud in a strong storm. The slope in the pictures looks to be about 1:1, but could be steeper. The drop looks to be about 6 feet down to the wetland. Mr. Holt agreed. There is a lot of loose dirt on the slope. Ms. Mackay stated the applicant had action taken in 2007, they hired an environmental company to draw up a plan, then planted trees. The town has photos to show there were WCD signs visible on trees in the back yard in 2007. Ms. Mackay gave the applicant credit for fixing the problem 2007. The problem is you went in after you knew work shouldn't be done in that location and did more work in that location.

There is a pool with a 4 foot deck on the side toward the wetland. The pool is also going to need a fence outside the deck. Grass is not going to be acceptable outside that fence. Ms. Mackay said this pool is expensive and a lot of money has probably already been spent. There was human error during the installation, but Conservation cannot take that into consideration. Ms. Mackay specifically stated she would not be considering human error. She understands it and sympathizes with it, but Conservation's job is to look out for the environmental impacts of construction. We are supposed to protect wetlands. Instructions were clearly written on the permit to be sure the pool apron and all associated equipment remain outside the WCD. This was written on the permit as well as the application for a permit.

Ms. Mackay agreed with Mr. Hogan that the applicant should tell us what they want to do with the area that is disturbed. We want to see a plan of how the applicant is going to mitigate the WCD impacts between the pool and the wetland. We want the most that can be done to be done. You want our opinions and want us to write a recommendation to ZBA to support your after the fact variance. Zoning can listen to us or ignore us or choose a path in-between. This case is very hard.

Mr. Holt said he was planning to recreate the plan from BBEC from 2007. Mr. Hogan said that was not going to be adequate. Ms. Mackay agreed. Mr. Hogan said we have to be able to defend our recommendations. If we recommend this, we will have more people making mistakes, coming to us and saying sorry. We need to look out for the buffer. He understood there was no ill intent on this project. He thought maybe they could get an environmental study that showed what could be done in the limited space to super charge filtration. The 50 foot buffer is gone. The previous planting scheme is not good enough.

Mr. Stanvick said this was a business relationship. The pool is in the wrong place, someone is responsible for that mistake. The question is who is going to pay to relocate the pool. If the pool is relocated, the problem goes away. The pool should be moved and put in the correct location based on the building permit, then there is no need to worry about how to restore the WCD with a pool in the middle. Mr. Holt said they probably could not put the pool outside the WCD unless they remove the deck from the house. Mr. Stanvick said someone messed up and someone should be held accountable. We can make a recommendation to ZBA and they can do whatever they want with the recommendation, but from a conservation perspective it is not a good decision to leave a pool in the WCD.

Ms. Shydo is having a hard time with this project. A big mistake was made. Going back to the 2007 plan and planting 11 trees is not acceptable. Something must be done between the pool and the wetland. She agreed with Mr. Hogan that a professional environmental scientist should be brought in to assess the site and see how to best mitigate the issues related to the pool in the WCD. She is very concerned that there has been a stop work order, but the work is not complete. If the applicant gets a variance, there will be more work in the WCD as more trucks come in to finish the pool, paving and fencing, with each step getting closer to the wetland. She is concerned the silt fencing or barrier did not go up until they were told during the stop work order, even though erosion controls were specified on the permit. Ms. Shydo would like to know what is going to be done to mitigate and lessen the impact as the project is completed and she would like to see a professional design a plan for replanting the area.

Ms. Mackay agreed with Ms. Shydo and Mr. Hogan about a professional scientist designing a plan. Ms. Mackay was not sure if any more area of the WCD could be disturbed as the photos show disturbance all the way from the house down to the wetland. The photos taken by NHDES and the aerial photos where NHDES defines toe of slope is very close to the wetland. The fill brought in for the pool flows down the slope to the wetland. It is not clear if the fill was used only where the yard naturally ended, but there is a lot of loose gravelly soil down to the wetland. The entire area would need to be planted with some kind of wetland adjacent type of plants. The top of slope would need to be planted. Into the yard from the top of slope would need to be planted. We are not talking 14 trees, we are talking 100's of items. Different sizes and types of plants. You need a thick layer of plants from the outside of the fence all the way down to the wetland. This area must be completely full of shrubs and perineals of different types. This cannot be done by going to Home Depot and planting a few plants. Ms. Mackay said her comments indicate she is ok with this project. She is not. She advised the applicant to think about this planting scheme before coming to us again or before going to ZBA.

Mr. Prolman said he would like to hire someone like Jim Gove, who is a wetland and soil scientist to develop a plan. He would like to come back to us as soon as possible with that plan.

Ms. Mackay said that was a good course of action. She wanted to make it clear to the applicant that this must be done, but that did not guarantee a positive recommendation to ZBA. She is doubtful she will be able to recommend this project to ZBA even when this environmental work is proposed, but this must be done anyway. Zoning is going to need to see a good faith effort to recreate as much of this buffer as possible, but she did not want to give a false impression that if the applicant came back with a plan and it has a great planting scheme that she could recommend

this project to Zoning. She was only speaking for herself, but wanted the applicant to understand her position.

Mr. Hogan and Mr. Stanvick did not want to vote on this tonight. They want to see the proposed plan of plantings.

The filtration system in the pool is a cartridge so there is no backwash.

Ms. Delehanty said she did not want fertilizers to be used near the wetland.

Mr. Steward made a motion for a site walk. No one made a second. There will be no site walk. Members thought the photos showed enough. Unfortunately, the photos show the site in a negative light.

Ms. Mackay encouraged the applicant to work with someone who is really going to dig into this project and come up with a good planting scheme. She again reiterated that she did not think she would be able to recommend this to ZBA because the WCD is 50 feet and it is gone on this site. She said our whole mission is environmental and keeping the 50 foot buffer. Approval or recommendation is going against our own mission of protecting wetlands and protecting the environment. That being said she still would like to see a fantastic planting scheme rather than the dirt slope that presently exists. The current conditions must be fixed.

Ms. Shydo insisted the applicant include, as part of the plan, a reposting of the WCD signs. She does not want to see this type of mistake again and felt that if the WCD was clearly marked in 2007 this problem could have been avoided.

Mr. Prolman requested a date specified on our June meeting as he did not think they could hire a wetland scientist, have them visit the site and write up a plan by our May meeting. Ms. Mackay said we do not date specify on our board, but we would send notice to for the applicant to appear in June. She said they could be on the May meeting, but would like about a week notice if they were going to come in May. Mr. Prolman agreed they would send plans about a week ahead of the meeting in May if they could. Ms. Mackay said the Commission would be in touch and if May did not work, June was certainly available. She explained that Planning required plans be submitted 10 days ahead of the meeting, but Conservation does not. Conservation would like to know if the applicant will be attending as close to 10 days as possible, but this is not a legal standard. The more notice Conservation has and the sooner an applicant gives us plans, the more time we have to formulate questions and this usually leads to a better outcome of the plan.

Ms. Mackay said Conservation is not going to vote on this project tonight. She felt the applicant may get a less favorable vote than if they come back with a comprehensive plan. A great plan may convince some members to vote in favor of the project. She advised the applicant to talk to Zoning about the process they have agreed to undertake.

Public Comments:

None.

MINUTES:

Motion: (Delehanty/Steward) to approve the minutes of March 10, 2021.

Vote: 4-0 in favor. Roll call vote. Shydo and Hogan abstained.

Motion: (Steward/Delehanty) to approve the minutes of non-public from March 10, 2021.

Vote: 4-0 in favor. Roll call vote. Shydo and Hogan abstained,

Ms. Delehanty gave Ms. Mackay a few comments about typos. Ms. Mackay agreed to fix the mistakes. The Commission voted on the minutes with the understanding the typos would be fixed.

WALK-IN ITEMS:

Ms. Delehanty reminded us of Earth Day on April 22, 2021. This year's theme is Restore Our Earth. Suggestions to celebrate are plant a tree or butterfly bush, start a garden, take a hike, recycle and/or switch to ecofriendly cleaning products. Celebrate Earth Day each day throughout the year. She mentioned you can contribute to a better earth even if you do not have much money. You can buy a packet of wildflower seeds for about \$2.00 to plant in your yard.

Ms. Delehanty read a flyer available in town about dog waste. The cover said "I poop, you scoop." The pamphlet is put out by the clean water initiative and is designed to encourage residents to pick up their dog waste and dispose of the waste in trash cans. Do not dispose of dog waste or other waste in storm drains.

Ms. Delehanty showed us a certificate from the National Wildlife Federation. In order to receive this certificate from the Federation, individuals can plant a shrub then write to the Federation and tell them how you have improved the environment in your own yard. They will send you the certificate. Ms. Delehanty thought kids might like to do this then receive the acknowledgement in the mail from the Federation.

ADJOURNMENT:

Motion: (Steward/Hogan) to adjourn.

Vote: 6-0 in favor. Roll call vote.

Adjourned at 8:48 p.m.

Respectfully submitted,
Karen Mackay,
Recording Secretary

Attachment #1

A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency

4/14/2021 Conservation Commission Meeting

As Acting Chair of the Conservation Commission, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that the meeting will be held in Sherburne Hall should anyone choose to attend in person. However, participants may also participate remotely which was authorized pursuant to the Governor's Emergency Order. In accordance with the Emergency Order, I am confirming that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.¹ All members of the Commission have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and participate in this meeting by dialing the following phone number:

646-876-9923

or by entering this website address: www.zoom.us selecting **Join Meeting** and entering the meeting ID and password listed below

Meeting ID# 896 1110 7272 Passcode 901254

Please provide your first and last name to the attendant.

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the Town website: www.pelhamweb.com on the Conservation Commission page.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:

If anybody has a problem, please call 603-508-3089 or email at: jgreenwood@pelhamweb.com.

d) Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that **all votes** that are taken during this meeting shall be done by **roll call vote**.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the
Right-to-Know law

¹ Many public bodies are utilizing video conferencing technology, such as Zoom, to ensure the electronic meeting comply with the Right-to-Know law and any applicable due process requirements. In certain circumstances, a regular business meeting of a public body may be conducted utilizing audio-only technology. If you have any questions about the appropriateness of the technology utilized to conduct your meeting, please consult your agency counsel or the Attorney General's Office.